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[*LAMONT PUBLIC UTILITY DISTRICT IS A SPECIAL DISTRICT AND A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA, EXEMPT FROM PAYMENT OF COURT FILING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103]

FILED
SUPERIOR COURT, METROPOLITAN DIVISION
COUNTY OF KERN

JAN 19 2012

TERRY McNALLY, CLERK
BY _____ DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN

METROPOLITAN DIVISION

* * *

COMMUNITY RECYCLING & RESOURCE RECOVERY, INC., a California corporation and LAMONT PUBLIC UTILITY DISTRICT, a public entity,

Petitioners/Plaintiffs,

vs.

COUNTY OF KERN, a public entity, and DOES 1 through 100, inclusively,

Respondents/Defendants.

CASE NO. S-1500-CV-275272-EB
Complaint filed: 11/22/11

DECLARATION OF MATTHEW COTTON IN SUPPORT OF PETITIONERS' REPLY TO RESPONDENT'S OPPOSITION TO EX PARTE APPLICATION FOR STAY OF ADMISTRATIVE ORDER REVOKING CONDITIONAL USE PERMIT
[CCP §1094.5(g)]

COPY

I, MATTHEW COTTON, declare as follows:

1. I make this declaration in support of Petitioners' Application for Stay of Administrative Order Revoking Conditional Use Permit. If called as a witness in this matter, I could testify to the above based upon personal knowledge except as to those matters stated based upon information and belief, as to which matters I believe them to be true and correct.

My Qualifications and Experience:

2. I am the owner of Integrated Waste Management Consulting, LLC. I have provided professional consulting services in the area of commercial composting for over 20 years in California. My experience ranges from evaluating solid waste management plans of major regional areas to managing the complex issues of regulatory compliance, to the practical details of composting. I have completed hundreds of significant solid waste projects, including permitting and assisting in the development of some of the major composting facilities in California. A true and correct copy of a resume that describes my education, experience and qualifications is attached hereto and incorporated as Exhibit "A."

Under contract to the California Integrated Waste Management Board (now the Department of Resources, Recycling and Recovery or CalRecycle), I have conducted three statewide surveys of the Compost and Mulch Producing Infrastructure in California, attached as Exhibit "B" and incorporated herein. Thus I am familiar with most of the major composting facilities in the state. In addition, I have and continue to provide consulting services for dozens of commercial composting facilities, including permitting over a dozen facilities. I routinely testify before various regulatory agencies including CalRecycle, the State Water Resources Control Board and the San Joaquin Valley Air Pollution Control District regarding the appropriate level of regulatory oversight of composting facilities in California. I am a paid instructor of classes on composting for the US Composting Council, the Solid Waste Association of North America, the California Resource Recovery Association, and others.

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How the Community Compost Facility Contributes to the Public Good

3. Fundamentally, the Community Recycling & Resource Recovery ("Community") composting facility in Lamont, contributes a significant public good in that it provides the infrastructure for all of California to meet ambitious recycling mandates, including state recycling laws (recently increased to 75% statewide), greenhouse gas reductions mandated by AB 32, and forthcoming mandatory commercial recycling. In addition, the facility is one of the largest sources of agricultural compost in the San Joaquin Valley helping to improve California's vast agricultural economy. This unique facility took years to develop into the facility it is today. It would be both very difficult and extremely costly to replicate this facility.

4. Over the past 20 years as a result of legislation discussed below, California has invested millions of dollars in recycling infrastructure, including collection programs, consumer education, and in the development of facilities. Recent legislation (AB 341, Chapter 476, Statutes of 2011, Chesbro) increases the state's recycling mandate to 75 percent. This legislation initiates a significant shift from landfilling as the primary means of solid waste management in the state to recycling.

In order to shift solid waste materials from landfills to recycled materials, various facilities must be developed to create useful end products produced from the waste. This shift creates benefit (i.e., valuable compost for agriculture) from waste and is the major benefit of the Community facility. All three of the "Compost Infrastructure" studies funded by CalRecycle (Attached hereto and incorporated as Exhibit "C") document that agriculture is the primary market for compost produced in the state.

The Community facility is an excellent example of a facility which creates useful end products from waste material which otherwise would end up in landfills. Waste materials (brush, leaves, grass, and food scraps), which prior to 1990 were landfilled, are separated from the waste, processed, and recycled into a valuable soil amendment.

In addition to the soil fertility benefits of adding compost to California soils, a recent study by CalRecycle (participated in by Community) showed greenhouse gas reduction benefits of adding compost to soils (as Attached hereto and incorporated see Exhibit "D").

5. In order for California to meet its ambitious recycling goals as required by CalRecycle, it will need a robust composting infrastructure making compost out of a variety of organic products for agricultural uses. The Community facility, one of the largest existing composting facilities in the State, is critical to California meeting these new mandates.

Community has shown significant leadership in developing one of the first and most successful commercial recycling programs that is truly statewide in its reach. Prior to this program, few supermarkets collected their food scraps for composting in California. The Community program now reaches over 1,200 stores, providing needed commercial recycling in communities across the state.

As mentioned above, AB 341 will result in the development of a statewide mandatory commercial recycling regulation currently being developed by CalRecycle. The Community grocery store collection and composting program is exactly the type of program California jurisdictions hope to implement in order to comply with this ordinance.

The Community Compost Facility is Key to Meeting State Recycling Goals

6. The composting facility operated by Community is a critical part of statewide infrastructure required for California to meet its ambitious recycling and sustainability goals. AB 939 (Statutes of 1989) established a 50 percent landfill diversion mandate on California's cities and counties. Most of the currently operating composting facilities in the state were developed to help jurisdictions achieve this mandate. All across California, cities and their haulers developed curbside green material collection programs to help meet AB 939s landfill diversion mandate.

AB 341, signed in 2011, establishes a 75 percent recycling target, which will require increased commercial recycling and collection of heretofore infrequently recycled commodities. Chief among these infrequently recycled commodities is food scraps. Food scraps are currently the single largest item by weight remaining in the California disposed waste stream currently being wasted to landfills. This fact was documented in the most recent Statewide Waste Characterization Study conducted for CalRecycle, attached hereto and incorporated as Exhibit "E."

7. There are currently only a few cost-effective options for the recycling of food scraps in CA. Of the 120 permitted composting facilities, approximately 20 are currently permitted to accept food scraps and some of these are limited to taking very small amounts of food. The Community facility is one of the largest facilities in the state and one of the largest food composters.

8. A significant part of implementing AB 341 will be an emphasis on commercial recycling. The grocery store food scraps collection and composting program that Community runs is one of the most successful and significant commercial recycling programs in the state. Community collects grocery store produce waste and waxed corrugated cardboard from over 1,200 grocery stores in California. However, the success of this program depends upon the continued operation of the Community composting facility. Without this facility, food waste will end up in the landfill and the 75% recycling requirements cannot be met without recycling food waste.

Prohibitive Rules in the SJVAPCD Would Make Community Difficult to Replace if Community Ceases Operations.

9. Under normal circumstances, organic materials (like leaves, branches, and grass) emit volatile organic compounds (VOCs) as they decay. This is a natural process, but under the right circumstances VOCs can combine with Nitrogen Oxides (Nox) and form ozone (commonly referred to as smog). The San Joaquin Valley was recently designated as an Extreme Non Attainment area with regard to compliance with the Federal Clean Air Act (CAA) standard for ozone.

10. In order to attempt to reverse this designation, the SJVAPCD has promulgated tough new rules for facilities which emit VOCs. Rule 4566, promulgated in 2011, establishes emission reduction procedures for composting facilities. In addition, by District Rule, any new or expanded composting facility in the SJVAPCD that emits more than two pounds per day of any criteria pollutant would be subject to NSR. Almost any commercial compost facility exceeds this threshold.

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The NSR requirement has a number of impacts, the most significant being the need to purchase emission reduction credits (ERCs). ERCs are also commonly referred to as "offsets". The goal of offsetting new emission development is to stop unhealthful emission increase in the SJVAPCD. The cost of purchasing VOC ERCs varies considerably, but has been estimated by the SJVAPCD in 2010 as ranging from $11,000 - $24,000 per annual ton of VOC. The SJVAPCD further estimated that the offset costs for a new 100,000-ton per year facility would be $1.5 million. This estimate is contained within a PowerPoint Presentation attached hereto and incorporated as Exhibit "F."

11. Community historically processes approximately 700,000 tons per year. Using the same SJVAPCD assumptions, the offset cost for a new 700,000-ton per year facility would be $10.5 million. The $10.5 million accounts solely for the cost for ERC offsets, not including land acquisition, equipment and Capital and O&M costs.

The purpose of this calculation is to show that if the Community facility is not permitted to operate, the $10.5 million cost of replacing the lost composting capacity within the SJVAPCD, given the small profit margins of composting facilities, would be prohibitive. The effect of the Extreme Non Attainment designation has already had a severe chilling effect on the development of new composting facilities within the SJVAPCD. No new composting facilities have been developed within the SJVAPCD since the promulgation of Rule 4566 in 2011.

Need for Increased, California-based Plastics Recycling

12. As mentioned above, recent legislation (AB 341) created a 75 percent recycling requirement in California. Plastics are another material type that is being targeted for increased recovery efforts. Most plastics recovered for recycling in California are sent overseas for recycling. A number of stakeholders in California are working to increase in-state plastic processing capacity as a way to retain revenue and job creation in California.

Community's efforts to evaluate and develop increased in-state plastics recycling is a positive development for legitimate in-state plastics recycling and remanufacturing.

Wastewater Recycling via Composting.

13. While not typical at most composting facilities, Community's practice of using recycled wastewater as the initial moisture source for composting is an environmentally sound practice with multiple benefits. As a treatment process, composting typically uses significant volumes of water; this is especially true in Kern County in the arid southern part of the San Joaquin Valley. By using reclaimed wastewater from the adjacent Lamont Public Utility District (LPUD), Community satisfies part of its considerable water needs with wastewater while providing a local recycling necessity for the LPUD and keeping LPUD customer rates low.

Applying Wastewater to Composting Material is Superior to Applying Wastewater to Farmland

14. Commercial composting facilities in California are required to perform and document a two-part Process to Further Reduce Pathogens (PFRP). Title 14 regulations require all compost to undergo the PFRP process. For a windrow facility like Community, this requires that internal compost temperatures exceed 132° F (55° C) for a period of 15 days during which the piles are turned five times. This process has its roots in EPA 40 CFR Part 503 regulations for pathogen reduction. In addition to the time/temperature process, all compost must be tested for indicator pathogens to document the effectiveness of the PFRP process.

15. Applying wastewater to composting material is superior to applying wastewater to farmland. Subjecting the wastewater to the time/temperature process of composting significantly reduces pathogens and provides a means of dispersing nutrients and salts that may otherwise accumulate in dedicated farmland when wastewater is applied to farmland.

Helping Jurisdictions Meet Ambitious Recycling Goals.

16. As stated above, each California jurisdiction is required to meet the recycling goals of AB 939 and now AB 341. In 2003, the City of Arvin was facing a Compliance Order from CalRecycle for not developing the needed programs to meet the then-existing 50 percent goal. By implementing a number of new recycling programs, perhaps most significantly weekly food and yard trimmings collection, Arvin met this recycling requirement and was removed

from the Compliance Order. Most of this was possible due to the presence of Community Recycling, the closest local outlet for food and yard trimmings.

Because of the implementation of the food scraps collection program, the tonnage diverted per home in Arvin increased 29%. The City of Arvin and its hauler made a number of improvements to accomplish this, including use of the Community facility. There are a limited number of more geographically distant local or regional facilities that could provide this service if Community were to cease operations. As stated above, replacing the food composting capacity potentially lost would be very difficult.

Future Benefits of the Community Composting Facility

17. Since 1990, California has steadily increased the rate by which it expects its citizens and businesses to recycle. From 1990 to 1995, California jurisdictions implemented curbside recycling programs for bottles and cans and newspaper to meet AB 939s 25% mandate. From 1995 to 2000, jurisdictions implemented curbside yard trimmings collection in an effort to meet the 50% mandate.

With the passage of AB 341 in 2011, Californians are now required to meet a 75 percent recycling mandate. This increased mandate will require innovation and increased recycling of materials including food waste and plastics along with programs and facilities like Community to recycle these products.

18. While AB 341 does not specify the types of programs a jurisdiction must use to meet the 75 percent goal, it is likely that increased food scraps collection and composting programs will be developed. Food scraps collection from commercial and institutional sources is increasing rapidly in 2012. To meet recycling goals, this material must be diverted from landfills and recycled into reusable materials. Once diverted, most of this collected food waste will be delivered to composting facilities. As one of the largest permitted composting facilities in the state, the Community facility is poised to be an outlet for a significant portion of this food. Currently, of the roughly 120 composting facilities in the state, only 20 including Community, are permitted to accept food scraps. Further, new air quality regulations in two of the largest air Districts (SJVAPCD and the South Coast Air Quality Management District

(SCAQMD) will make development of new food scraps composting facilities difficult and expensive.

Similar to Rule 4566, the SCAQMD recently promulgated Rule 1133.3, which like 4566, requires existing composters to make efforts to reduce VOCs. A unique wrinkle in the SCAQMD rule also makes any facility that accepts food scraps use advanced composting technologies (forced aeration) which requires a permit. Any permitted facility in the SCAQMD will be subject to NSR and the purchase of offsets.

The SCAMD comprises the most populous portion of California. The SJVAPCD is the largest air district and currently houses the most composting facilities. Thus two of the largest and most significant air Districts have developed prohibitory rules which will make new compost facilities and capacity significantly more expensive then existing facilities, and potentially uneconomical.

19. Kern County and its cities are required to comply with AB 341. Kern County operates transfer stations and landfills which currently provide green waste diversion either through mulch, boiler fuel or ADC. None of these facilities currently handle any source-separated food scraps for composting, nor are they so permitted.

The city of Bakersfield operates a large composting facility which has accepted very limited quantities of food scraps in the past. The ability of this facility to handle food scraps, particularly food scraps from sources other than the city of Bakersfield, is unknown. Expanding the city of Bakersfield's permit would make it subject to NSR requiring purchase of expensive offset credits. This seems unlikely for most compost facilities and extremely unlikely for a publicly owned facility.

20. There are two other large permitted composting facilities in Kern County. The first, the South Kern Regional Composting Facility (SKRCF) is primarily a biosolids composting facility. SKRCF is subject to Rule 4565 (which pertains to biosolids and requires similar VOC reductions as 4566). It is unclear how much additional material SKRCF could handle before it would need to increase its permits, thus triggering required purchase of NSR offsets.

21. The other facility is Liberty Composting located near Lost Hills, which while also primarily handling biosolids has accepted and composted food scraps in the past. Liberty appears to be pursuing an incineration project for its biosolids and it is unknown what quantity of food scraps it could handle before exceeding its permit, thereby requiring purchase of NSR offsets.

Greenhouse Gas benefits of Composting

22. AB 32 (The Global Warming Act of 2006) requires the Air Resources Board to reduce GHG emissions to 1990 levels by 2020. Organic materials disposed of in landfills generate significant quantities of methane, which is a powerful greenhouse gas. Estimates vary, but methane can be 20 to 100 times more detrimental as a greenhouse gas than CO2. Managing methane at landfills is one of the major requirements of AB 32.

Keeping organics (yard trimmings, food scraps, etc) out of landfills can prevent methane from being created because organic materials only generate methane if decomposed anaerobically; composting is predominantly an aerobic process. In fact, the Climate Action Reserve (CAR) recently developed a protocol to quantify the efforts of composters to reduce methane from landfills by composting food scraps (See Exhibit "F," attached and incorporated herein).

23. Community has "listed" its project with the Climate Action Reserve and is seeking recognition under this program. In addition to the benefits of Community removing organics from landfills, the finished compost, when applied to agricultural fields has other indirect but significant benefits which were quantified in a recent CalRecycle Study (See CalRecycle Study attached hereto and incorporated as Exhibit "D"). These potential benefits include increased water holding capacity (extremely important in California), increased water infiltration rates, reduced bulk density, improved soil tilth, reduced erosion potential, decreased needs for herbicides and pesticides, reduced fertilizer requirements, and improved yield and crop quality.

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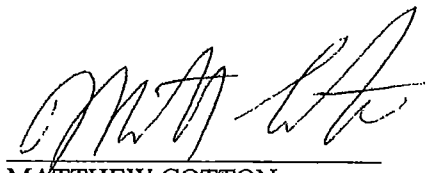
I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this 19th day of January 2012 in Nevada City, California.



MATTHEW COTTON